



*United States Attorney  
Southern District of New York*

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**TOP EXECUTIVES AT BROKER-DEALER**  
**CHARGED WITH SECURITIES FRAUD CONSPIRACY**  
**IN CONNECTION WITH ABUSIVE MUTUAL FUND TRADING**

DAVID N. KELLEY, the United States Attorney for the Southern District of New York, announced the filing of securities fraud conspiracy charges against three top executives at MUTUALS.com, a Dallas-based broker-dealer. A criminal Complaint unsealed today in Manhattan federal court charges RICHARD A. SAPIO, the Chief Executive Officer, ERIC MCDONALD, the President, and MICHELE LEFTWICH, the compliance officer, with participating in a scheme to defraud mutual fund shareholders in connection with "market timing," a practice involving the short-term trading of mutual funds.

According to the Complaint, MUTUALS.com's principal business was helping its client hedge funds and other sophisticated investors to make short-term "market-timing" investments in mutual funds. It was charged that as a result of this trading strategy for its clients, MUTUALS.com received numerous warnings from mutual fund companies that its trading

practices were unwanted and harmful to shareholders, and that the funds would not permit such trades. In response, according to the Complaint, the defendants devised and executed a number of deceptive practices to circumvent restrictions placed on MUTUALS.com's trading by mutual funds.

According to the Complaint, these deceptive practices included (1) creating and using multiple account numbers for the same client; (2) creating and using affiliated broker dealers to execute trades, and concealing and misrepresenting the relationship between MUTUALS.com and these affiliated broker dealers; and (3) executing trades through multiple clearing firms. By using these deceptive techniques, in 2003 alone, MUTUALS.com and its affiliated entities were able to execute, on behalf of their clients, over 3,000 trades in mutual funds that had specifically complained about the firms' short-term trading practices, it was alleged.

For example, according to the Complaint, after receiving numerous complaints from mutual fund companies about MUTUALS.com's trading practices, the defendants established two affiliated broker dealers to continue to place market timing trades for their clients in a manner designed to conceal MUTUALS.com's involvement. As alleged in the Complaint, although these affiliated broker dealers were controlled by the defendants, they did not use MUTUALS.com's address, but instead

used mailboxes maintained at mail service facilities. In addition, MCDONALD allegedly lied to at least one mutual fund about the relationship between MUTUALS.com and one of the affiliated broker dealers the defendants created, and for which MCDONALD served as President. Specifically, MCDONALD claimed that there was no relationship between MUTUALS.com and the affiliated broker dealer, and that he had never heard of the affiliated broker dealer, it was alleged.

The Complaint charges SAPIO, MCDONALD and LEFTWICH with conspiracy to commit securities fraud. If convicted, each defendant faces a maximum penalty of five years in prison, and a fine of the greatest of \$250,000, or twice the gross gain or gross loss from the offense.

The defendants are also facing civil securities fraud charges filed against them by the SEC in Dallas federal court.

SAPIO, 40, lives in Dallas, Texas.

MCDONALD, 31, lives in DeSoto, Texas.

LEFTWICH, 35, lives in Dallas, Texas.

The three defendants are expected to appear today before United States Magistrate Judge HENRY B. PITTMAN.

Mr. KELLEY said: "This prosecution sends a clear signal that abusive and deceptive conduct in the securities industry will not be tolerated. This is especially true when such conduct

is used to trade in mutual funds, and threatens to dilute the returns due the millions of Americans who have placed their savings in such funds. We will continue to vigorously prosecute those who commit fraud to enrich themselves at the expense of innocent investors."

Mr. KELLEY is a member of the President's Corporate Fraud task force. The Task Force is chaired by Deputy Attorney General JAMES B. COMEY, and was created by President BUSH in 2003 to combat white collar crime.

Mr. KELLEY praised the efforts of the United States Postal Inspection Service in the investigation of this case. Mr. KELLEY also expressed gratitude to the SEC for its assistance in this matter.

Assistant United States Attorneys STEVEN R. GLASER, JOSHUA A. LEVINE, and JOSHUA KLEIN are in charge of the prosecution.

The charges contained in the Complaint are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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